

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of the Subscriber Carrier)	CC Docket No. 94-129
Selection Changes Provisions of the)	
Telecommunications Act of 1996)	
)	CC Docket No. 00-257
Policies and Rules Concerning)	
Unauthorized Changes of Consumers')	
Long Distance Carriers)	

ORDER

Adopted: September 5, 2005

Released: September 5, 2005

By the Chief, Consumer & Governmental Affairs Bureau:

1. On Monday, August 29, 2005, Hurricane Katrina struck the Gulf Coast of the United States, causing significant damage in Louisiana, Mississippi, and Alabama and mass evacuation of the affected areas.¹ In the Commission's continuing efforts to assist the telecommunications industry as it restores service in those areas,² the Consumer & Governmental Affairs Bureau grants, on its own motion, a temporary, limited waiver of certain Commission rules regarding "slamming."³ Specifically, as

¹ President Bush issued Major Disaster Declarations for these three states on that same day. See <http://www.fema.gov/news/disasters.fema>. We recognize that President Bush also issued a Major Disaster Declaration for the state of Florida on August 28, 2005. We do not extend the relief granted in this Order to carriers operating in the state of Florida, because the telecommunications infrastructure in Florida apparently was not subject to the same level of destruction as was the infrastructure in parts of Louisiana, Mississippi, and Alabama.

² See *Telephone Number Portability, Numbering Resource Optimization*, Order, CC Docket Nos. 95-166 and 99-200, FCC 05-161 (rel. Sept. 1, 2005); *Numbering Resource Optimization*, Order, CC Docket No. 99-200 (rel. Sept. 4, 2005).

³ Slamming is the submission or execution of an unauthorized change in a subscriber's selection of a provider of telecommunications service. See 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*), *stayed in part*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000); *stay lifted*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000), Errata, DA No. 00-2163 (rel. Sept. 25, 2000), Erratum, DA No. 00-2192 (rel. Oct. 4, 2000), Order, FCC 01-67 (rel. Feb. 22, 2001); Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking, CC Docket No. 94-129, FCC 03-42, 68 FR 19152 and 19176 (rel. March 17, 2003); Order, CC Docket No. 94-129, FCC 03-116 (rel. May 23, 2003). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. See, e.g., *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance* (continued....)

explained below, we waive section 64.1120(e) of the Commission's rules as necessary.

2. Pursuant to section 258 and the Commission's rules, carriers are barred from changing a customer's preferred carrier without first complying with the Commission's carrier change authorization and verification procedures.⁴ We grant this waiver to the extent necessary to enable carriers, without complying precisely with the Commission's streamlined carrier change procedures,⁵ to temporarily become the providers of service to customers that are otherwise unable to obtain service due to Hurricane Katrina. This waiver will facilitate carrier flexibility in order to serve hurricane victims in the affected areas.

3. To effectuate the carrier-to-carrier transfer of the affected customers under the Commission's carrier change notification and authorization rules, carriers should comply with section 64.1120(e) of the rules to the extent indicated herein. The Commission's streamlined carrier change authorization rules provide for the carrier-to-carrier transfer of customers such that the acquiring carrier need not obtain individual subscriber authorization and verification for the carrier changes.⁶ According to these rules, the acquiring carrier, no later than 30 days before the planned carrier change, must notify the Commission, in writing, of its intention to acquire the subscribers, and must certify that it will comply with the required procedures, including the provision of 30-day advance written notice to all affected subscribers.⁷ Because of the catastrophic nature of the damage to telecommunications systems, we hereby waive the 30-day written advance notice requirement, for both Commission certification and customer notice, for the transfer of customers that are or were in the affected areas that no longer have service. Acquiring carriers should, however, provide customers with notice of the transfer as soon as is practicable, including the rates, terms and conditions of the services provided, in accordance with the Commission's rules.⁸ In addition, the acquiring carriers should also provide to the Commission, as soon as is practicable, certification that complies with the requirements of section 64.1120(e), except the 30-day periods waived herein. The certification to the Commission should be filed in CC Docket No. 00-257, should indicate that the acquiring carrier has complied with the terms of this waiver, and should include a copy of the notice it sent to the affected subscribers. We expect that the acquiring carriers will provide the affected customers with the same rates, terms and conditions of service as the customers' originally authorized carrier.⁹ In addition, when the originally authorized carriers of the affected customers are once again able to provide service, the carriers that acquired these customers must facilitate the return of customers to their original carriers.

4. Section 1.3 of the Commission's rules authorizes the Commission to suspend, revoke,

(...continued from previous page)

Carriers, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), *stayed in part*, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), *reconsideration denied*, 8 FCC Rcd 3215 (1993); *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, *reconsideration denied*, 102 F.C.C.2d 503 (1985).

⁴ See 47 C.F.R. §§ 64.1100-1190.

⁵ See 47 C.F.R. § 64.1120(e).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* In accordance with the Commission's rules, customers should not bear the burden of the cost of changing service providers (see 47 C.F.R. § 64.1120(e); *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, First Report and Order, CC Docket No. 00-257, 16 FCC Rcd. 11218 (2001).

⁹ If the rates charged by the acquiring carrier are higher than the rates charged by the originally authorized carrier, we expect that the difference in rates will be refunded to the customers.

amend, or waive a Commission rule for good cause shown.¹⁰ Accordingly, we find that, in order to promote the maintenance and rebuilding of communities in hurricane affected areas and to facilitate continued access to telecommunications services for hurricane victims, it is in the public interest to waive the 30-day notice requirement of section 64.1120(e) of the Commission's rules. This waiver applies to carriers that acquire customers whose authorized carriers are unable to provide service in the affected areas due to Hurricane Katrina. The waiver is in effect immediately for nine months, until June 6, 2006.¹¹ If carriers are in need of additional relief from the carrier change rules, they should contact the Commission's Consumer & Governmental Affairs Bureau.

5. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5 and 258 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155 and 258, and the authority delegated under sections 0.141, 0.361 and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361 and 1.3, that 47 C.F.R. §§ 64.1120(e) is waived to the extent herein described.

FEDERAL COMMUNICATIONS COMMISSION

Monica Desai
Chief, Consumer & Governmental Affairs Bureau

¹⁰ 47 C.F.R. § 1.3. This rule provides that "[a]ny provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefore is shown." *Id.*

¹¹ Once the originally authorized carrier is able to provide service to affected customers, including prior to the expiration of this waiver, the acquiring carrier will promptly facilitate the transfer of such customers back to the originally authorized carrier.